IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE TENTH DAY OF MARCH
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT APPEAL Nos.2197 and 2219 of 2004

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WRIT APPEAL No. 2197 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 18/11/2004 in WP No.9469 OF 2004 on the file of the High Court.)

Between:

Dr. Jesudas, S/o G. Narayana Rao,
R/o Hyderabad

..... APPELLANT

AND

1 Chinta Jayaprakash, S/o China Venkateswarlu,

R/o Serilanka, Serilanka Post (Via) K.K.Palem
Pamarru Mandal,E.G. District
2 The Registrar, NTR University of Health Sciences, Vijayawada,

Krishna District

.....RESPONDENTS

Counsel for the Appellant: Mr.RAMESH RANGANATHAM & Mr. RAMA RAO GHANTA

Counsel for the Respondent No.1: Mr. NOOTY RAM MOHAN RAO &

Mr. V. AJAY KUMAR

Counsel for the Respondent No.2: Smt.Y.PADMAVATHI,

SC for NTR UNIVERSITY

WRIT APPEAL No. 2219 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 18/11/2004 in W.P.No.9469 OF 2004 on the file of the High Court.)

Between:

The Registrar, NTR University of Health Sciences
Vijayawada, Krishna District.

..... APPELLANT

AND

1 Chinta Jayaprakash, S/o.Chinta Venkateshwarlu,
R/o.Seri Lanka, Serilanka Post, Via KK Palem Pamarru Mandal, E.G.District

2 Dr.Jesudas, S/o Not known
Vijayawada, Krishna District.

3 The Dental Council of India, New Delhi rep by its Secretary.

.....RESPONDENTS

Counsel for the Appellant: Dr. Y.PADMAVATHI

Counsel for the Respondent No.1: Mr. NOOTY RAM MOHAN RAO

Mr. V. AJAY KUMAR

Counsel for the Respondent No.2: Mr. RAMESH RANGANATHAM &

Mr. RAMA RAO GHANTA

Counsel for the Respondent No.3: STANDING COUNSEL FOR

CENTRAL GOVERNMENT

The Court made the following :

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COMMON JUDGMENT : (per **C.V. RAMULU,J**)

These two writ appeals are filed aggrieved by the Judgment dated 18-11-2004 in W.P.No.9469 of 2004. W.A.No.2197 is filed by the 2nd respondent, while W.A.No.2219 of 2004 is filed by the 1st respondent in the writ petition.

The parties are hereinafter referred to as arrayed in the writ petition.

The writ petition was filed by a student (1st respondent herein) seeking for a Mandamus directing the 1st respondent to admit him into MDS (Pedodontics & Preventive Dentistry) course treating him as a local candidate under SC-C category. The case of the writ petitioner, in brief, is that he is a permanent resident of Serilanka village, Pamarru Mandal of East Godavari District. His father – Chinta Venkateswarlu – is also a permanent resident of Serilanka village and he retired as a Lecturer while residing in the said village. Since there was no proper educational facilities available in the vicinity, he had to study from I to V Class in Central Boys High School, Yanam, from V to X Class in Jawahar Navodaya Vidyalay, Metkur, Yanam and Intermediate course in STPP Government Junior College, Yanam, which was conducted by the Board of Intermediate Education, Andhra Pradesh. From 1995 to February, 2001, he studied BDS course in Central University at Pondichery. Yanam is located at a distance of 5 Kilometres from his village in

Andhra Pradesh i.e. Serilanka. He used to travel up and down from his village to Yanam for the purpose of education all through.

The respondent-University issued a notification dated 29-4-2004 for admission into MDS course. He appeared for the entrance test with Hall Ticket No.043039 and obtained 78th rank. However, his admission was denied during the counselling held on 27-5-2004 on the ground that he belongs to non-local area as he did his entire education at Yanam. He produced original Caste-cum-Nativity Certificate for the purpose of obtaining admission by virtue of his residence. Instead of giving admission to him, another candidate by name Dr.Jesudas (appellant in W.A.No.2197 of 2004) with Hall Ticket No.043054, who obtained 170th rank, was given admission. Aggrieved by this, the writ petition was filed.

It is the case of the writ petitioner that though he studied right from I Class to BDS in the Union Territory of Pondichery, he resided all through along with his family members at Serilanka village in Andhra Pradesh; therefore, he should be given admission in MDS course by virtue of his residence in Andhra Pradesh. Further, as per Regulation 3(B)(I) a & b (II)(i) of the Regulations for admissions to the MDS Courses in Government Dental College and Hospital (for short 'the Regulations') and by virtue of the nativity certificate issued by the authorities, he is required to be treated as a local candidate. Therefore, the rejection of his admission into MDS course is arbitrary and illegal.

A detailed counter affidavit was filed by the 1st respondent (appellant in W.A.No.2219 of 2004) stating *inter alia* that having regard to the educational course, which the petitioner had undergone outside the State and as per the definition of 'local candidate' under Para 4 of the Presidential Order and also Rule 11 of the Rules framed in G.O.Ms.No.646, dated 10-7-1979, the writ petitioner would not come well within its ambit. Further, since the petitioner has studied BDS course outside the State, he will automatically become a non-local candidate for consideration for admission into MDS course.

The 2nd respondent-appellant also filed a separate counter affidavit and reiterated the same stand as was taken by the 1st respondent. The petitioner has undergone education outside the State and having studied BDS graduation course in Pondichery, he cannot claim as a local candidate; more so, he did not reside for the

prescribed period as contemplated under the Presidential Order. After hearing both the parties, the writ petition was allowed as under:

> "As long as the parents of the petitioner are not shifted outside the State of Andhra Pradesh and a candidate has undergone education at such place, it cannot be said that he is not a local candidate. Necessarily, it follows that the petitioner had to seek the educational pursuits only for want of facilities in his village. In the circumstances, it is to be held that as contemplated under Regulation 3(b)(I) a & b (II)(i), the petitioner squarely falls within the definition of local candidate.
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> Even otherwise, it is to be seen that the petitioner not only belongs to SC-C category, but also has secured fairly higher rank i.e., 78, whereas, on such unsustainable plea the second respondent, who had obtained a rank at 170 is given admission, which ex-officio is wholly arbitrary.
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> In the circumstances, the writ petition is accordingly allowed with a direction to the respondent No.1 to consider the petitioner's case as a local candidate in terms of Regulation 3(b)(I)(a) & b (II)(i) and for providing admission into the MDS course in terms of the notification issued on 29.04.2004. No order as to costs."

Challenging the said Order, the present writ appeals have been filed by respondents 1 and 2 as stated supra.

Sri Ramesh Ranganatham, learned counsel appearing for the appellant in W.A.No.2197 of 2004, relied upon the Judgment in **BATHINA RAJYA SHILPA v. NTR UNIVERSITY OF HEALTH SCIENCES** and submitted that neither the Presidential Order nor the University Regulations recognize the candidates like the writ petitioner as a local candidate for the purpose of admission into MDS course. Learned counsel also submitted that mere residence itself does not confer any rightful claim to be treated as a local candidate for the purpose of admission into MDS course. Admittedly, all through, the petitioner studied outside the State of Andhra Pradesh and pursued his BDS course in Pondichery. At least, during this period, he was not residing in the State of Andhra Pradesh. Therefore, looking from any angle, he cannot be treated as a local candidate. Learned counsel brought to our notice Paragraphs 46 and 47 of the said decision, which read as under:

> "**46**. However, a candidate, who is not regarded as a local candidate under Para 4(1) can be treated as a local candidate under sub-paragraph (2) if he/she fulfils either Clause (a) or Clause (b). Again Clause (b) is applicable only to candidates, who have not studied in educational institutions, but have resided in the State for a period of not less than seven consecutive academic years immediately preceding the date of commencement of the relevant qualifying examination in which he or she appeared or first appeared. Since the petitioner has studied in educational institutions, she doesn't come under that clause.

> **47**. In order to be treated as local candidate under Clause (a) of sub-paragraph (2) of Paragraph 4 one must have studied in an educational institution or educational institutions in the State for a period of not less than seven consecutive academic years ending with the academic year in which he or she first appeared in the relevant qualifying examination and such candidate will be regarded as a local candidate in relation to (1) such local area where he has studied for the maximum period out of the said period of seven years or (2) where the periods his or her study in two or more local areas are equal, such local area where the candidate has studied last in such equal periods. Admittedly, the appellant has not fulfilled this clause also as she had not studied for seven consecutive academic years in the State of Andhra Pradesh ending with the relevant qualifying examination of Intermediate. She has studied only for five years in the State of Andhra Pradesh ending with the relevant qualifying examination of Intermediate. She had studied only for five years in the State out of the seven consecutive years ending with the qualifying examination and she studied the qualifying examination in Gujarath State. In order to be treated as a local candidate under Paragraph 4(2), it is essential that she must have studied seven consecutive academic years ending with the relevant qualifying examination in the State."

Sri Nuty Ram Mohan Rao, learned counsel appearing for the respondent-writ petitioner contended that the whole problem requires to be looked from altogether a different perspective. The introduction of Article 371D into the Constitution of India is an exception carved out for a special purpose. For variety of geographical reasons, Yanam is treated as a part of Union Territory of Pondichery, but it is located just 5 KMs to Serilanka village. The nearest best educational institution available for the petitioner was Yanam and as such, the petitioner pursued his studies at Yanam. That itself does not make him a non-local candidate, since he pursued his studies by going up and down everyday from Serilanka village located in the State of A.P. Clauses 1 and 2 of Article 371D of the Constitution is the answer for this problem. Equitable opportunities should be provided to the residents of State, qua, local and non-local areas. The play in the joints needs to be understood. In the peculiar facts and circumstances of the case, the principle laid down in **CHAIRMAN, UNIVERSITY OF HEALTH SCIENCES v. K.TULASIRAM** would be squarely applicable to this case. Further, the petitioner is a Scheduled Caste candidate within the State of A.P. and may not be treated as such elsewhere; therefore, simply because the petitioner studied at Yanam, which is just about 5 KMs from his native place located outside the State of A.P., could not be denied admission to MDS. The niceties of law should not be treated as hurdles in his way in getting admission into MDS course. This case requires to be viewed from altogether a different perspective. In **K.TULASIRAM**'s case (2 supra), it was held by a Division Bench of this Court as under:

"8. Studies of the writ petitioner-respondent in the local area have been interrupted by two years of his studies in the State of Haryana. He may not for the said reason be found to qualify as a candidate, who studied in any of the educational institutions within the local area of the University consecutively for a period of not

less than four years ending with the academic year in which he appeared for qualifying examination. A serious question, however, has arisen whether, notwithstanding his staying away from the local area for a period of two years in the State of Haryana, he was qualified as one who resided in the local area for a period of not less than four years immediately preceding the date of commencement of the relevant qualifying examination. One has to take notice, however, of the fact that the petitioner is a minor and that it is not in dispute that his parents have been residing in village Valasapalle falling within the local area. Writ petitioner's parents thus are residents of the local area and natives of Valasapalle village.

13. Learned counsel for the appellants has contended on the said basis that there is no occasion for any investigation into the residence of a minor and whether the animus of a child can be divided from that of his or her parents, as has been done by this Court in the case of *R. Sridhar v. The Convenor, EAMCET-1995* (Writ Appeal No.1007 of 1995,dated 13-9-1995). Once it is found that the petitioner-respondent has not actually resided within the local area consecutively for a period of four years immediately preceding the date of commencement of the relevant qualifying examination, disqualification gets attached. With such disqualification he cannot qualify for admission under the said Presidential Order and the Rules. We would have given some more consideration to this argument had we not noticed the obvious contradiction in the contention that when a reference is made to a candidate for admission to any course of study in the above Presidential Order, no mention is made whether, while deciding whether the candidate resided in any local area, the concept of animus in the case of the candidate shall not be considered at all and when such a provision is made, it is not clarified whether the candidate actually resided will not include the residence, as the animus must always determine answering both the qualitative as well as quantitative test.

15. In a suitable case one may have to pause and think whether the interruption of two years in the continuous education of a candidate like the petitioner-respondent on account of the situation which is beyond his control will disqualify him and in an appropriate case the Court may consider that his education outside of the local area for such compelling reasons should be taken as continuous with the education in the local area as this Court has held in the case of *R.Sridhar v. The Convenor, EAMCET-1995*, supra. *R. Sridhar* was a student of Jawahar Navodaya Vidyalaya at Choppadandi in Karimnagar district. When he was selected on merit by a Committee constituted by the District Collector under the scheme of National Integration, he was sent to Birauli in Bihar State for studying IX and X Classes. He accordingly completed his IX and X Classes successfully in

the said school in Bihar State and returned to the parent school, Jawahar Navodaya at Choppadandi in Karimnagar District for further studies…."

We have given our anxious consideration to the entire issue.

The only question that falls for consideration in this appeal is as to whether the writ petitioner-respondent can be treated as of local candidate for the purpose of admission into MDS course and mere production of a permanent residence certificate in Andhra Pradesh itself is enough to treat the petitioner as a local candidate as per Regulation 3(b)(I)(a) & b (II)(i) of the Regulations.

In the State of Andhra Pradesh, the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order,1974 (for brevity 'the Presidential Order') governs the field as to admission into educational institutions and public employment. The Presidential Order defines as to 'local' and 'non-local candidates' for the purpose of admission into educational institutions. The definition as available in the Presidential Order and the University regulations as to 'local candidate' reads as under:

Para-4 of the Presidential Order

I. 4. Local candidates: (1) A candidate for admission shall be regarded as a local candidate in relation to a local area.

a) If he has studied in an educational institution or educational institutions in such local area for a period of not less than four consecutive academic years ending with the academic year in which he appeared, as the case may be, first appeared in the relevant qualifying examination.

b) where the whole or any part of four consecutive academic years ending with the academic year in which he appeared or as the case may be, first appeared for the relevant Qualifying Examination, he has not studied in educational institutions, if he had resided in that local area for a period of not less than four years immediately preceding the date of commencement of relevant qualifying examination in which he appeared, or as the case may be, first appeared.

(2) A candidate for admission to any course of study who is not regarded as a local candidate under said regulation (1) above in relation to any local area shall--

(a) if he has studied in educational institutions in the State for a period of not less than seven consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared for the relevant qualifying examination, be regarded as a local candidate in

relation to

i. such local area where he has studied for the maximum period out of the said period of seven years; or

ii. where the periods of his study in two or more local areas are equal, such local area where he has studied last in such equal periods; or

(b) If, during the whole or any part of the seven consecutive academic years ending with the academic year in which he appeared or as the case may be first appeared for relevant qualifying examination, he has not studied in the educational institution in any local area, but he has resided in the State during the whole of the said period of seven years, be regarded as a local candidate in relation to

a. Such local area where he has resided for the maximum period out of the said period of seven years; or

b. Where the period of his residence in two or more local areas are equal, such local area where he has resided last in such equal periods.

Explanation – For the purposes of this paragraph

i. "Educational Institution" means a University or any educational institution recognized by the State Government a University or other competent authority.

ii. "Relevant qualifying examination in relation to admission to any course of study" means the examination, a pass in which is the minimum educational qualification for admission to such course of study.

iii. ……..

iv. The question whether any candidate for admission to any course of study has resided in any local area shall be determined with reference to the places where the candidate actually resided and not with reference to the residence of his/her parent or guardian."

Regulation No.3 of the Regulations for Admissions to the MDS Courses in Government Dental Colleges and Hospitals:

"3.(B) **Local candidates:**

I. A candidate for admission shall be regarded as a local candidate in relation to a local area.

a) If he/she studied in an educational institution or educational institutions in such local area for a period of not less than four consecutive academic years ending with the academic year in which he/she appeared, as the case may be, first appeared in the relevant qualifying examination.

Or

b) where the whole or any part of four consecutive academic years

ending with the academic year in which he/she appeared or as the case may be, first appeared for the relevant Qualifying Examination, he/she has not studied in educational institutions, if he/she had resided in that local area for a period of not less than four years immediately preceding the date of commencement of relevant qualifying examination in which he/she appeared, or as the case may be, first appeared.

II. A candidate for admission to any course of study who is not regarded as a local candidate under said regulation (I) above in relation to any local area shall.

(i) if he/she has studied in educational institutions in the State for a period of not less than seven consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared for the relevant qualifying examination, be regarded as a local candidate in relation to

a. such local area where he/she has studied for the maximum period out of the said period of seven years; or

b. where the periods of his/her study in two or more local areas are equal, such local area where he has studied last in such equal periods; or

c. If, during the whole or any part of the seven consecutive academic years ending with the academic year in which he/she appeared or as the case may be first appeared for relevant qualifying examination, he/she has not studied in the educational institution in any local area, but he/she has resided in the State during the whole of the said period of seven years, be regarded as a local candidate in relation to

(a) Such local area where he/she has resided for the maximum period out of the said period of seven years; or

c. Where the period of his/her residence in two or more local areas are equal, such local area where he/she has resided last in such equal periods.

<u>Explanation – (for purpose of this Sub-regulation)</u>

v. “Educational Institution” means a University or any educational institution recognized by the State Govt., a University or other competent authority.

vi. “Relevant qualifying examination in relation to admission to any course of study” means the examination, a pass in which is the minimum educational qualification for admission to such course of study.

vii. ……..

viii. The question whether any candidate for admission to any course of study has resided in any local area shall be determined with reference to the places where the candidate actually resided and not with reference to the residence of his/her parent or guardian.

……..”

As seen from above, Para 4(2)(b) of the Presidential Order makes it clear that mere residence of a person in the local area itself does not entitle him/her to claim to be a local candidate. The said clause further requires that a person must have appeared for the qualifying examination, even if he has not studied in any educational institution i.e. may be by distance education in a Statewide institution or in some cases where there is a gap before the qualifying examination. Only in such

circumstances he would be treated as a local candidate and not otherwise. The interpretation of Paras 4(1) and (2) of the Presidential Order has been dealt with in the Full Bench decision of this Court referred to supra. Therefore, in the circumstances of the case on hand, the petitioner neither studied/passed the qualifying examination in the State of Andhra Pradesh nor he resided in the State of Andhra Pradesh during the relevant period. Admittedly, the writ petitioner resided for pursuing his BDS course in Pondichery, which is the qualifying examination for admission into MDS course. The ratio laid down in **K.TULASIRAM**'s case (2 supra) has no relevance to the facts of this case. This is not a case where the student was a minor and was compelled to reside along with his parents and further studied a part of the course in Andhra Pradesh and rest of the course elsewhere. In fact, in **BATHINA RAJYA SHILPA**'s case (1 supra) also, the student studied from I Class to X Class in A.P., but she studied Intermediate course at Ahmedabad in Gujarat state. In those circumstances, a Full Bench of this Court held that the petitioner therein should be treated as a non-local candidate.

Yet another attempt was made by Sri Nuty Ram Mohan Rao, learned counsel for the writ petitioner, stating that the very Article 371D clauses (1) and (2) read with the aims and objects of the Constitution (Thirty-Second) Amendment Act,1973 are the answer for the purpose of this case. We are afraid, we cannot accede to the said contention. It is also his contention that having regard to the requirement of the State as a whole, for equitable opportunities and facilities for the people belonging to different parts of the State in the matter of public employment and in the matter of education, different provisions were provided and in that direction, the Presidential Order was issued. The very purpose of the Presidential Order was to organize the local cadres for different parts of the State. The purpose of admissions into the Universities within the State or to any other educational institution, which is subject to the control of the State Government, the Presidential Order specifies to the extent to which and the manner in which and the conditions subject to which preference or reservation shall be made. But the Presidential Order cannot be stretched to such an extent to deny the writ petitioner the status of a local candidate in view of the fact that he did not study in the State of Andhra Pradesh, though he resided in the State of Andhra Pradesh all through. We are not convinced. It is neither evident from the aims and objects of the Constitution (Thirty-Second) Amendment Act,1973 nor is there anything in the language employed in the Presidential Order, which emanated

from Article 371D of the Constitution.

If the argument of the learned counsel for the writ petitioner-respondent is to be accepted, it may result in disastrous consequences. All the persons, who studied in the neighbouring States may claim that they are the permanent residents and in fact resided in the State of A.P. being nearer to the border areas and as such, they are also entitled to be treated as 'local candidates' for the purpose of admission into educational institutions. This is not the object of the Presidential Order. The primary requirement to be a local candidate is that one should have studied or appeared for the qualifying examination in the State of A.P. or part thereof. In this case, neither the writ petitioner appeared for the qualifying examination in the State of A.P. nor studied any part of the said course in the State of A.P. Mere residing in the State of A.P. is not the criteria. If that is to be taken into consideration, every student, who studied elsewhere and resided in the State of A.P. for 4 years or so, may claim to be a local candidate, which may result in the abrogation of the Presidential Order and the very Constitution (Thirty-Second) Amendment Act,1973. Therefore, the writ petitioner-respondent cannot be treated as a local candidate for the purpose of admission into MDS course and mere production of a permanent residence certificate in Andhra Pradesh is not enough to treat the petitioner as a local candidate even as per Regulation 3(B)(I) a & b (II)(i) of the Regulations.

For all the above reasons, the Writ Appeals are allowed and the impugned order is set aside and W.P.No.9469 of 2004 is dismissed. There shall be no order as to costs.

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B.Sudershan Reddy, J

10-3-2005

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C.V.Ramulu, J

prk

DEPUTY REGISTRAR

To

1 The Registrar, NTR University of Health Sciences, Vijayawada,

Krishna District

2 The Dental Council of India, New Delhi rep by its Secretary.

3 CD copies.